LIM KAR BEE & ANOR. v. LIM POH BIN & ORS.

[O.C.J. (Mohamed Dzaiddin J.) October 21 & 24, 1986]

[Penang – Suit No. 23-347-1986]

Practice and Procedure – Interlocutory relief – Specific Relief Act, 1950, s. 54(g).

The plaintiffs had brought an action against the defendants and applied by way of an interlocutory relief for an order restraining the defendants jointly and severally by themselves, their agents or tenants until the trial of this action or further order (a) from being or remaining or entering the premises of Lim Kar Bee & Sons Sdn. Bhd.; (b) from assaulting, molesting, annoying, threatening bodily harm or injury or otherwise interfering with either of the plaintiffs.

Held: from the facts deposed the court was justified in exercising its discretion to grant the two injunctions prayed for.

[*Editorial Note:* Subsequent to the granting of the Order, Miss Pamela Ong appeared for the defendants. By consent, parties agreed to vary the Order by deleting prayer (a) and adding a new prayer restraining the plaintiffs from committing similar acts against the defendants.]

Case referred to:

(1) *Egan* v. *Egan* [1975] 2 All E.R. 167.

CIVIL SUIT.

K. Balasundaram for the plaintiffs.
Pamela Ong (Miss) for the defendants.

Cur. Adv. Vult.

Mohamed Dzaiddin J.: The plaintiffs have brought an action against the defendants and applied by way of an interlocutory relief for an order restraining the defendants jointly and severally by themselves, their agents or servants until the trial of this action or further order (a) from being or remaining or entering the premises of Lim Kar Bee & Sons Sdn. Bhd. at No. 107 Brick Kiln Road, Penang and (b) from assaulting, molesting, annoying, threatening bodily harm or injury or otherwise interfering with either of the plaintiffs.

These applications are supported by the affidavits of both plaintiffs affirmed on the same date of September 30, 1986. Basically, the complaints of the plaintiffs are against the defendants who are the sons of the 1st plaintiff. There had been since the beginning of 1986 a dispute within the members of the family company known as Lim Kar Bee & Sons Sdn. Bhd. ("the Company") involving the 1st plaintiff on one side and his wife and the three defendants on the other side. This dispute is now a subject matter of an originating petition pending before the court. According to the 1st plaintiff, the 1st defendant had previously sometime during the Chinese New Year threatened to assault him in the company's office after a quarrel concerning the signing of the company's cheques. Since then, at other meetings of the directors, the 1st defendant had always been abusive and at times had resorted to violent action like thumping tables, banging doors, shouting abusive words and had also threatened the 1st plaintiff with bodily injury. Whilst in the office, he had generally been arrogant and abusive. On one occasion the 1st defendant had tried to humiliate the 1st plaintiff in the presence of office staff by scolding and shouting in obscene language and had also threatened to beat him up.

In the case of the 2nd defendant, the 1st plaintiff alleged that on September 26, 1986, there was a quarrel between them over the refusal of the 2nd defendant to return a file concerning one of the company's projects. During this quarrel the 2nd defendant also threatened to beat him up.

The 2nd plaintiff is a certified Accountant who was appointed to be the personal secretary to the 1st plaintiff. The said appointment appeared to have angered the defendants. According to him, there had been instances where he was abused, intimidated and assaulted by the defendants. He had lodged police reports in respect of these incidences. In fact, on September 23, 1986, he was also assaulted by the 3rd defendant. Prior to the assault, he was abused and prevented from leaving the office and was threatened with bodily harm.

Having considered the facts deposed in the accompanying affidavits, I am now posed with a problem whether or not in the circumstances of this case I have the jurisdiction to grant the injunction prayed for. Section 54(g) of the Specific Relief Act 1950 clearly provides that an injunction cannot be granted to prevent, on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance. According to *Kerr* on Injunction, 6th edition, at page 8:

> "The court will not interfere by injunction in matters merely criminal or immoral, which do not affect any right to property. But if an act which is criminal touches also the enjoyment of property, the court has jurisdiction, but its interference is founded solely on the ground of injury to property."

Mr. Balasundaram, counsel for the plaintiffs, referred me to a passage in *Spry* on the Principles

of Equitable Remedies, 2nd edition at p.315 which states as follows:

"A matter which has been much discussed from time to time is the suggested requirement that an applicant for an injunction must be able to establish that it is property, or a proprietary right or interest, which he seeks to protect. Thus it was once stated by Turner L.J., in refusing an injunction, "It is on the ground of injury to property that the jurisdiction of this court must rest." This statement, however, must be referred to its context; what was there being discussed was the right to restrain acts which amounted to a nuisance as opposed to acts which were merely illegal. Indeed, it is clear that for many years courts of equity have been accustomed to issue injunctions where plaintiffs have been asserting rights which clearly are of a personal nature and not of a "proprietary" nature in any ordinary sense of that term. . . . . .

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Accordingly any attempt to found the jurisdiction to grant injunctions exclusively upon the existence of property or proprietary rights cannot be justified; and a different explanation of the assumption of jurisdiction must be found. Thus in 1923 Higgins J. stated, "The old doctrine was that injunctions must be based on property – some infringement of rights of property ..... In modern practice, however, the power to grant an injunction has been applied to injury to the plaintiff's trade, to breach of contract or of confidence, to cases which come under some distinctive head of equitable jurisdiction – such as an action to set aside an agreement. ... Certain judges have said that an injunction may be issued for a merely personal libel ..." Indeed, as has been seen, many further examples might readily be added of circumstances where injunctions will be granted in the absence of a proprietary right or interest."

In *Egan* v. *Egan*[1] the defendant, aged 19, lived with the plaintiff, his mother in her council flat. While living there the defendant continually assaulted and maltreated the mother and extracted money from her by physical violence. He refused to contribute to the household expenses and failed to maintain regular employment. The plaintiff suffered injury to her health as a result of the physical assault. The defendant threatened that if the plaintiff try to exclude him from the house he would force his way back in. The plaintiff brought an action against the defendant and applied by way of interlocutory relief for an order that the defendant vacate the house and injunctions restraining him until the trial of the action or further order from (a) being or remaining or entering the house and (b) assaulting, molesting, annoying or otherwise interfering with the plaintiff. Oliver J. in his judgment at p. 169 stated as follows:

"The facts deposed to in the instant case leave me in no doubt that this is a very grave case and one in my judgment where I ought to follow the decision of Coleridge J in *Stevens* v. *Stevens* (1907) 24 T.L.R. 20 and grant an injunction to restrain the defendant from continuing to trespass after his licence had been withdrawn, as it has, even although the case is one between parent and child. I would add that I have no difficulty in reaching that decision on the basis of the facts set out in the plaintiff's affidavits.

In addition, counsel moves for an injunction to restrain the defendant from 'assaulting, molesting, annoying or otherwise interfering with the plaintiff'. He helpfully drew my attention to a passage in *Clerk and Lindsell* on Torts and referred to other leading textbooks where doubt is expressed whether the court will normally restrain by injunction the commission of assaults and whether the proper remedy is not to go before the justices and seek to have the defendant bound over to keep the peace. The present edition of *Salmond*, I am told, appears to suggest that no injunction will issue. The editors of *Clerk and Lindsell* are not so positive; they say: '... the court may even restrain the commission of assaults, but that power will rarely be exercised.' It is to be noted that apparently none of these textbooks cites any authority for the proposition that the power will rarely be exercised. I myself cannot see any logical reason why, where there is a clear threat of further assault – against the background of a clear history of assaults taking place over the past year or two – this court should be powerless to interfere to protect a threatened plaintiff by way of an injunction and to restrain further assaults. The passage in *Clerk and Lindsell* to which I have referred states that there is such a power. I think that in the instant case I am amply justified in exercising that power. I accordingly propose to grant both the injunctions and order as prayed."

In the present case, there are two aspects of the application. One is for an order restraining the defendants from being or remaining or entering the Company's premises. From the facts deposed, it is clear that the defendants' presence in the premises amounted to an act of nuisance and their continued presence may in all probability cause a further breach of the peace, in the light of the animosity existed between the plaintiffs and the defendants. In the circumstances I think I am justified in exercising my power to grant the injunction.

The second prayer is to restrain the defendants from assaulting, molesting, annoying or threatening bodily harm or injury appears not to come directly as affecting the proprietary rights of the plaintiffs which they seek to protect. Following the reasoning in the judgment of Oliver J. in *Egan* v. *Egan (supra)* and bearing in mind that there may be threats of further assault or bodily harm or injury to the plaintiffs, in my judgment, this is a clear case where I should exercise my power in granting the injunction prayed for.

Order accordingly.

Solicitors: *Balasundaram & Co.; Lim Kean Siew & Co.*